

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

JOSHUA DAVID MARTINEZ,
Petitioner,

V.

NATHANIEL QUARTERMAN,
Respondent

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Civ. No. C-08-268

ORDER ADOPTING MEMORANDUM AND RECOMMENDATIONS

Pending before the Court is the respondent's motion for summary judgment (D.E. 17). On December 12, 2008, the Magistrate Judge issued a memorandum recommending that the Court dismiss the petitioner's habeas petition on the merits for failure to state a claim (D.E. 24). The respondent filed objections to the recommendation on December 17, 2008 (D.E. 25). The petitioner has not filed any objections.

In a disciplinary proceeding, the petitioner was found guilty of possessing a weapon intended to be used to injure another person, namely a three-inch piece of metal sharpened at both ends. The petitioner was punished with the loss of 15 days of recreation time, 30 days of commissary time, and was forced to remain in line class three. After filing a Step 1 grievance and a Step 2 grievance, the petitioner filed this federal habeas petition.

The Magistrate Judge recommends dismissing the petitioner's habeas petition on the merits for failure to state a claim. As the Magistrate Judge noted,

neither the loss of recreation time or commissary time nor the reduction in line class constitutes a deprivation of a protected liberty interest. Furthermore, the petitioner did not lose any good time credit and is not eligible for release to mandatory supervision. Therefore, the petitioner has failed to state a claim that a liberty interest has been taken without due process.

The respondent has filed two objections to the Magistrate Judge's recommendation. First, the respondent objects to the conclusion that the pending habeas petition is not a second or successive petition. Second, the respondent objects to the conclusion that the petitioner properly exhausted his claim regarding the bias of the hearing officer. However, these objections were made to perfect the record for appeal and merely reiterate the arguments presented in the respondent's motion for summary judgment. Therefore, having reviewed the pleadings and motions on file, the Court adopts the Magistrate Judge's recommendation and hereby DISMISSES the petitioner's habeas action on the merits for failure to state a claim.

Although the petitioner has not filed objections, he has filed a motion for a certificate of appealability. An appeal may not be taken to the court of appeals from a final order in a habeas corpus proceeding unless the petitioner is granted a certificate of appealability. Because the Court dismisses the claims on the merits, the petitioner must show that reasonable jurists would find the court's assessment of the constitutional claims debatable or wrong in order to be granted the certificate. *Slack v. McDaniel*, 120 S.Ct. 1595, 1604 (2000). However, the

petitioner has not made such a showing. Therefore, the petitioner's request for a certificate of appealability is DENIED.

So ORDERED this 28 day of January, 2009.


HAYDEN HEAD
CHIEF JUDGE